Confessions of an Expert

C. Matthew Curtin
Objectives for this session

1. Understand what an expert is;
2. Consider cases presented from an expert point of view;
3. Discuss the use of experts in the context of IT; and
4. Consider strategies for working effectively with experts.
What is an “expert?”

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.”

—FRE 702
All in a year’s work

Interhack Corporation—Founder and practice leader
The Ohio State University—Lecturer, Department of Computer Science and Engineering.

Regulatory Compliance—Sensitive information loss
Contractual Compliance—Use of cryptographic controls
Public Safety—Silent and secure interagency messaging
Civil Litigation—Trade secret misappropriation
Criminal Adjudication—Violation of restraining order
Trade secret misappropriation

Employee leaves; clients solicited

“I didn't take any of the data.”

Analysis of computer system

“I did take the data, but no trade secret.”

Ruling

What the data show and do not show
Harassment

Note slid under the locked office door of a public official

‘You will pay for your crimes in office...’

Nightmare scenario

Computer-generated; suspect is assistant IT director

Computer analysis

*Eraser* and lack of active data; results of low-level analysis

Ruling
Response before litigation: Consulting

Loss of control over sensitive information

“What is exposed?”—Reconstruction of datasets

Assessment of operating environment

Information security assessment performed for counsel

Developing recommendations

Rigorous analysis; firm foundation; speaking to business

Use by counsel in forming legal advice
Use of experts

Where opinion is required—expert vs. fact witness

Opinions require rigor and caution—unassailable

Need for clear communication of complex topics

Experience in teaching attorneys, judges, and juries

Protection of internal resources
  
  Limiting scope of exposure

  Keeping attacks away from staff
Working with experts successfully

Be comfortable with the expert; insist on the right qualities

   Experience, clarity, humility, thoughtfulness, and toughness

Help expert to understand context

   Point toward standards, publications, relevant information

Let expert apply expertise

   Beware excessively narrow scope; tiny budget; pressures

Remember the role of the outside expert
Contact

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